No. 704.

Brief of Green for D. C.

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Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 101.

C. G. Blake, Rogers, Brown & Company, and the Hull Coal and Coke Company, *Plaintiffs in Error.*

vs.

Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Charles J. McClung, Jr., Partners as C. M. McClung & Co., et al.

In Error to the Supreme Court of the State of Tennessee.

JOHN W. GREEN,
Attorney for Defendant in Error.

S. A. MIMMACK & CO., PRINTERS AND BINDERS, KNOXVILLE.

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, 1897.

C. G. BLAKE, ROGERS BROWN & COMPANY, AND THE HULL COAL & COKE COMPANY, PLAINTIFFS IN ERROR,

vs.

CALVIN M. McCLUNG, WILLIAM P. SMITH, WILLIAM B. KEENER, F. H. McCLUNG, JR., AND CHARLES J. McCLUNG, JR., PARTNERS AS C. M. McCLUNG & CO., ET AL.

No. 101.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

The Embreeville Freehold Land, Iron and Railway Company, Limited, was a foreign corporation organized under the laws of the Kingdom of Great Britain and Ireland. In the year 1890 in compliance with the laws of Tennessee, as contained in the act of the General Assembly passed March 19th, 1877, Ch. 31, approved March 21st, 1877, regulating the terms upon which foreign mining and manufacturing

companies might carry on business in that State, said corporation filed a certified copy of its charter in the office of the Secretary of State at Nashville, Tennessee, and caused an abstract of its charter to be registered in the Register's office of Washington County, Tennessee. The business of the Company was mining and manufacturing iron, and it owned valuable mines and real estate at and near the town of Embreeville in Washington County, Tennessee, at which place its managers' office was established and its business conducted. The Company maintained its home office in London, its managing director resided there, and after the bill hereafter referred to was filed in Tennessee, liquidation under the Company's acts of Great Britain was ordered and begun in London. Rec. 2.

In June, 1893, the Company having become financially involved and unable to meet its heavy current obligations as they matured, C. M. McClung & Co., and others, defendants in error in this cause, filed a general creditors' bill in the Chancery Court of Washington County, Tennessee, alleging insolvency and praying for the appointment of a Receiver. Such proceedings were had as that the bill was sustained and a Receiver appointed, and the creditors of the Embreeville Frechold Land, Iron and Railway Company, Limited, were required to make themselves parties and set up and prove their claims according to the usual practice in cases of such character. Three classes of creditors appeared, viz: residents of Tennessee, residents of other States in the Union outside of Tennessee, and residents of England. Rec. 1, 3, 20, 25, 28, 31

The Chancellor held that these several classes should be paid in the following order, viz: 1st, that residents of Tennessee were entitled to priority of satisfaction out of the

assets of the Company; 2nd, that next after residents of Tennessee, residents of other States or countries than Great Britain should share ratably in the assets, and 3rd, that the remainder should go to the residents of England. Rec. 39-40.

Upon appeal this decree was affirmed as to the residents of Tennessee, but modified by the Court of Chancery Appeals and the Supreme Court of Tennessee so as to provide that all non-resident creditors, whether residing in other States than Tennessee or in England, should share equally and ratably in the distribution of the funds of the Company, after the Tennessee residents were first paid in full. Rec. 66-70.

The plaintiffs in error C. G. Blake and Rogers, Brown & Co., residents of the State of Ohio, and the Hull Coal & Coke Co., a resident of the State of Virginia deny that Tennessee residents are entitled to priority of satisfaction and have prosecuted a writ of error to this Court for the purpose of reversing said decree.

The Statute Upon Which the Tennessee Courts Based Their Decree Giving Priority to Tennessee Creditors.

Counsel for plaintiffs in error at pages 6 to 10 of their brief have set out in full the act of the Legislature of Tennessee upon which the Courts of Tennessee based their decree giving priority to residents of Tennessee. It is the Act of 1877, Chapter 31, page 44, and its caption is as follows: "An Act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business and purchase, hold and convey real and personal property in this State."

It provides among other things that corporations organized under the laws of other States or countries for the purpose of mining ores, coal, etc., and manufacturing same, may become incorporated in Tennessee and carry on the business authorized by their respective charters by first filing a copy of such charter in the office of the Secretary of State and an abstract thereof in the Register's office of the County where it is proposed to carry on business. Upon so doing, it shall be deemed to be a Tennessee corporation and may sue and be sued the same as corporations created under the laws of said State; it may purchase, acquire and hold real and personal property, and the State releases its right of escheat by virtue of the alien origin of such corporation. Then follows Section 5, which is as follows, viz:

"Be it further enacted that the corporations and the prop-
"erty of all corporations coming under the provisions of this
"act, shall be liable for all the debts, liabilities and engage-
"ments of the said corporation to be enforced in the man-
"ner provided by law for the application of the property of
"natural persons to the payment of their debts, engage-
"ments and contracts. Nevertheless, creditors who may be
"residents of this State shall have a priority in the distribu-
"tion of assets, or subjection of the same or any part thereof
"to the payment of debts over all simple contract creditors,
"being residents of any other country or countries, and also
"over mortgage or judgment creditors, for all debts, en-
"gagements and contracts which were made or owing by
"said corporations previous to the filing and registration of
"such valid mortgages, or the rendition of such valid judg-
"ments. But all such mortgages and judgments shall be
"valid, and shall constitute a prior lien on the property on
"which they are or may be charged as against all debts

"which may be incurred subsequent to the date of their reg-
"istration or rendition. The said corporations shall be lia-
"ble to taxation in all respects the same as natural persons
"resident in this State, and the property of its citizens is or
"may be liable to taxation, but to no higher taxation, nor
"to any other mode of valuation, for the purpose of taxa-
"tion; and the said corporations shall be entitled to all such
"exemptions from taxation which are now or may be here-
"after granted to citizens or corporations for the purpose of
"encouraging manufacturers in this State, or otherwise."

The Grounds Upon Which Plaintiffs in Error Attack This Statute.

Plaintiffs in error in their assignments of error say that this Statute is invalid, and that the Supreme Court of Tennessee erred in adjudging that it gives residents of Tennessee priority over non-residents for the following reasons, to-wit:

1st.—Because it is repugnant to Section 2, Article IV, of the Constitution of the United States which provides that "the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States."

2nd.—Because it is repugnant to Section 1, Article XIV, of the Amendments of the Constitution of the United States providing among other things that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Rec. 66, 68.

Attention is called in this connection to the fact that when plaintiffs in error filed their petitions in the insolvent proceeding in the Chancery Court they only claimed that this act was repugnant to Section 8, Article I, of the Constitution which provides that Congress shall have power to regulate commerce with foreign nations and among the several State, and among the Indian tribes, and that afterwards they obtained leave of the Chancery Court to so amend their petition as to allege that said Statute was repugnant to Section 2, Article II of the Constitution.

Its supposed repugnancy to Section 1, Article XIV, was not discovered until the assignments of error in the Supreme Court of Tennessee were filed where the point is for the first time raised, Rec 24, 37, 66, and the contention in regard to the interstate commerce clause is altogether abandoned.

The Right of States to Regulate Foreign Corporations Doing Business Within Their Territory.

It is a well established principle of law that a State in the exercise of its sovereign power may impose upon foreign corporations as a condition of coming into or doing business within its territory such terms, limitations, restrictions and regulations as in its discretion it may think proper, provided they are not repugnant to the Constitution or laws of the United States.

"A corporation is an artificial being, invisible, intangible "and existing only in contemplation of law. Being a mere "creature of the law, it possesses only these properties which "the charter of its creation confers upon it, either expressly "or as incidental to its very existence."

"A corporation can have no legal existence out of the "boundaries of the sovereignty by which it is created. It "exists only in contemplation of law and by force of law; "and where that law ceases to operate and is no longer ob- "ligatory, the corporation can have no existence. It must "dwell in the place of its creation, and cannot migrate to "another sovereignty."

Bank of Augusta vs. Earle, 13 Pet. 519.

"The recognition of the existence of a foreign corpora- "tion even by other States, and the enforcement of its con- "tracts made therein depend purely upon the comity of "those States—a comity which is never extended where the "existence of the corporation or the exercise of its powers "are prejudicial to their interests or repugnant to their pol- "icy. Having no absolute right of recognition in other States, but depending for such recognition and the en- "forcement of its contracts upon their assent, it follows as a "matter of course, that such assent may be granted upon "such terms and conditions as those States may think prop- "er to impose. They may exclude the foreign corporation "entirely; they may restrict its business to particular local- ities, or they may exact such security for the performance "of its contracts with their citizens as in their judgment will "best promote the public interest. The whole matter rests "in their discretion.'

Paul vs. Virginia, 8 Wall, 181.
The LaFayette Ins. Co. vs. French, 18 How, 404.
Doyle vs. Continental Ins. Co., 94 U. S. 535.
Hooper vs. California, 155 U. S. 648.
Ducat vs. Chicago, 10 Wall, 410.
Noble vs. Mitchell, 164 U. S. 367.
Liverpool Ins. Co. vs. Massachusetts, 10 Wall, 566.
Philadelphia Fire Asso'n vs. New York, 119 U. S. 110.

In the case of Fritts vs. Palmer, 132 U. S., 282, the Colorado Constitution and Statute prescribing the manner in which foreign corporations might do business in that State came before the Court for construction. Among other provisions said Statute contains the following, viz:

"And no corporation doing business in the State incor-"porated under the laws of any other State, shall be per-"mitted to mortgage or pledge or otherwise encumber its "real or personal property situated in this State, to the in-"jury or exclusion of any citizens or corporations of this "State who are creditors of such foreign corporation, and "no mortgage by any foreign corporation except railroad "and telegraph companies, given to secure any debt created "in any other State shall take effect as against any citizen "or corporation of this State until all its liabilities due to "any person or corporation in this State at the time of re-"cording such mortgage have been paid and extin-"guished."

The Court after setting out the Statute says: "No ques-"tion is made in this case—indeed there can be no doubt—"as to the validity of these Constitutional and Statutory "provisions so far at least, as they do not directly affect "foreign or other interstate commerce."

The same effect is Cooper Mfg. Co. vs. Ferguson, 113 U. S., 727.

It will be observed that the Colorado Statute is quite similar in its provisions to the Tennessee Statute. Indeed the Colorado Statute is more stringent, for it provides that no foreign corporation shall mortgage its property to the injury or exclusion of citizens of that State. But under the Tennessee Statute mortgages are valid and constitute a prior lien on the property as against all debts incurred subsequent

to their registration. In Tennessee the Legislature does not attempt to disturb the vested rights or the security of non-resident creditors. Surely if the Court can say, as it did, of the Colorado Statute that there is no doubt as to its validity, it cannot deny the legality of the Statute now under consideration.

Corporations Are Not Citizens Within the Meaning of Article IV., Section 2, of the Constitution.

Judge Field in the case of Paul vs. Virginia, supra, referring to the clause of the Constitution which provides that the citizens of each "State shall be entitled to all the privileges and immunities of citizens in the several States," says, "the term citizen as there used applies only to natural "persons, members of the body politic owing allegiance to "the State, not to artificial persons created by the legisla- "ture, and possessing only the attributes which the legisla- "ture has prescribed. * * *But in no case which has come "under our observation either in the State or Federal "Courts, has a corporation been considered a citizen within "the meaning of the provisions of the Constitution."

Id. 177, 178.

Corporations are not citizens within the meaning of this clause.

Pembina Mining Co. vs. Pennsylvania, 125 U. S. 181.
Liverpool Ins. Co. vs. Massachusetts, 10 Wall, 566.

Even if not precluded on other grounds, it would seem that the principle here enunciated would be conclusive at least as to one of the plaintiffs in error, viz: The Hull Coal & Coke Co., which is a corporation created by the laws of Virginia. Rec. 25. There is nothing anywhere in the rec-

ord to show that this Company had ever complied in any respect with the law authorizing it to do business in Tennessee. But even if it had done so, it cannot invoke the Constitutional provision in question because neither it nor its debtor the Embreeville Freehold Land, Iron & Railway Company (Limited) are citizens within the meaning of said provision.

Every Person Dealing with a Corporation is Bound to take Notice of the Provisions of Its Charter.

It is a settled rule that a person who deals with a corporation must at his peril, take notice of its charter or articles of association. The rule does not rest upon the ground that a charter or general incorporation law is a public statute of which all persons are deemed to have notice. It is a rule based upon no technical doctrine but upon the necessities of the case. It applies to foreign corporations as well as to domestic corporations and to corporations chartered by private acts of the Legislature as well as to those whose charters are part of the general laws.

Morawetz on Corp., Vol. 2, Sec. 591.
Beach on Corp., Sec. 384.

"Every corporation necessarily carries its charter where-"ever it goes, for that is the law of its existence. It may be "restricted in the use of some of its powers while doing bus-"iness away from its corporate home, but every person who "deals with it everywhere is bound to take notice of the pro-"visions which have been made in its charter for the man-"agement and control of its affairs both in life and after dis-"solution."

Reefe vs. Rundle, 103 U. S., 222, 226.
Root vs. Wallace, 20 Fed. cases, 1167.

Pearce vs. Madison R. R., 21 How., 441.
The law enters into and forms a part of all contracts.
Brine vs. Insurance Co., 96 U. S., 627.

We maintain that the plaintiffs in error in this case ought not to have contracted with the Embreeville Freehold Land, Iron and Railway Company in Tennessee unless they intended to abide by the Tennessee law. They knew as a matter of law that the Embreeville Company, being a corporation, had only those rights and powers which its charter conferred, and they knew as a matter of law, that being a foreign corporation, the State of Tennessee had the right to impose such conditions upon and exact such security from it for the protection of residents of Tennessee as would best promote the public interest. This being true, they were put upon inquiry, and in legal contemplation knew before they contracted with the Embreeville Company, that residents of Tennessee were given priority in the distributon of its assets or subjection thereof to the payment of debts over all simple contract creditors, residents of any other country or countries

The XIV Amendment to the Constitution has no Application.

The freedom of the slave race and the protection and security of the newly made freeman and citizens was the purpose of this amendment. Mr. Justice Miller in the Slaughter-House cases, speaking of this amendment, says, while it is true that only the Fifteenth Amendment in term mentions the negro, "it is just as true that each of the other articles was addressed to the grievances of that race and designed to remedy them." The privileges and immunities guaranteed in this amendment to citizens of the United States was de-

fined in this opinion to be the right to the protection of the Federal Government over life and liberty, the right to peacefully assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, the right to use the navigable waters of the United States, etc., as contradistinguished from the privileges and immunities secured to the citizens of the State by the second section of article 4 of the Constitution. The same opinion declares that the clause in this amendment which prohibits a State from denying to any person "within its jurisdiction the equal protecton of the laws" was directed against existing laws in the States where the newly emancipated negroes resided.

Slaughter House Cases, 16 Wall, 36.

The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies.

Missouri vs. Lewis, 101 U. S., 22.

The phrase "due process of law" as used in this amendment seems never to have been defined by this Court. In the case of Davidson vs. New Orleans, 96 U. S., 104, it is said, "there exists some strange misconception of the scope "of this provision * * *In fact it would seem from the char- "acter of many of the cases before us and the arguments "made in them, that the clause under consideration is looked "upon as a means of bringing to the test of the decision of "this Court the abstract opinions of every unsuccessful liti- "gant in a State Court of the justice of the decision against "him and of the merits of the legislation on which such a "decision is founded."

The phrases, "law of the land," and "due process of law," appear to be synonymous, and in Cooley's Constitutional

Limitations the author treats them as meaning that judicial proceedings shall "proceed upon enquiry" and "render judgment only after trial." In other words "due process of law" requires that a party shall be properly brought before the Court and shall have the opportunity in Court to establish any fact which under the laws and constitution would be a protection to him or his property.

Corley's Const. Lim., Sec. 354, 369.
Hurtado vs. California, 110 U. S., 516.

Whenever the law operates equally and alike on all persons and property similarly situated equal protection cannot be said to be denied.

Wurts vs. Hoagland, 114 U. S., 606.
Railroad Co. vs. Richmond, 96 U. S., 521.
Walston vs. Nevin, 128 U. S., 578.

A Kansas statute abrogating the common law rule in regard to the negligence of a fellow servant came before this Court in the case of Missouri Railway vs. Mackey, 127 U. S. 205, upon the contention that it was obnoxious to the Fourteenth Amendment as taking property "without due process of law," and as depriving the railroad of "equal protection of the law." The Court says in regard to the first point that "it cannot be successfully contended that the "State may not prescribe the liabilities under which corpo- "rations created by its laws shall conduct their business in "the future," and on the second point that "equal protection" is not denied if all persons subject to it are treated alike under similar circumstances.

It is hard to see just how the plaintiffs in error hope to bring their case within the purview of this amendment. No one is seeking to reach their property. The property which the Courts of Tennessee decided should be subjected to the

claims of Tennessee creditors belonged to the Embreeville Freehold Land, Iron and Railway Company. As well might a creditor complain because the law gives to mechanics a lien and to heads of families a homestead. The contract is always made with knowledge of these favored rights, and with at least an implied assent to the preferences thus allowed. If the law had forced the plaintiffs in error to sell to the Embreeville Company and at the same time declared that their debts should be subordinated to those of the residents of Tennessee, or if it had singled out these plaintiffs in error or if it had singled out the residents of some particular State or States of the Union, there might be good ground for complaint.

Previous Holdings of Supreme Court of Tennessee on Act of 1877.

In the case of Young vs. South Tredagar Iron Co., 85 Tenn., 189, in determining the *situs* of the stock of a foreign corporation, the Court says, among other things: "We do "not think that a foreign corporation of the character defin-"ed in this act, they being mining and manufacturing corpo-"rations, are authorized to carry on business in this State, "except upon compliance with this act and upon the terms "of this act." The case of the State vs. Phoenix Ins. Co., 92 Tenn., 420, involved the question of the legality of a tax imposed upon foreign corporations and the Court construed and upheld the Statute.

See also, Cory Lumber Co. vs. Thomas, 92 Tenn., 587.
L. & N. Railroad vs. M. & T. Railroad, 92 Tenn., 681.
Butler vs. U. S. Building & Loan Ass'n., 97 Tenn., 679.
Insurance Co. vs. Kennedy, 86 Tenn., 711.

The Statutory Priority Applies only to "Residents."

The language used in the Statute in question is "Nevertheless, the creditors who *may be residents* of this State, shall have a priority in the distribution of assets, etc." No priority is attempted to be given to "citizens" of Tennessee. The Court will not construe "residents" to be the equivalent of "citizen" unless the record shows that the Courts of Tennessee have in this case treated those words as interchangeable, and have denied to a *citizen* of another State of the Union who was *residing* in Tennessee the benefit of the statutory priority. There is no attempt upon the part of plaintiffs in error to show that citizens of other States than Tennessee who were residing in Tennessee were denied the statutory priority accorded to residents of Tennessee.

It will be noticed that the statute does not grant priority to "permanent residents" of Tennessee. In the case of *Ward vs. Maryland*, 12 Wallace, 421, the Maryland statute then under consideration discriminated against persons who were not *permanent residents* of that State. Mr. Evarts, for plaintiff in error there, argued that the statute "makes the discrimination rest upon the very fact which alone determines, in case of citizens of the United States, whether a person is or is not a citizen of one State or another, *to-wit: permanent residents in a state.*" And the decision in that case, by fair inference, is based upon this construction of the term "permanent resident."

The term "resident" has a less extensive signification in Tennessee than has the term "domicile or citizen."

Foster vs. Hall, 4 Hum. (Tenn.) 346.

The term "resident" imparts less of fixity and permanency than "citizen" or even "inhabitants."

Frost vs. Brisbin, 19 Wend. (N. Y.) 11.
S. C. 32 Am. Dec., 423.
Savage vs. Scott, 45 Iowa, 130.
21 Am. and Eng. Ency. Law, 124, 125.

The distinction between a "resident" and a "citizen" has been taken in this Court, in respect of the right to maintain suits in the Federal Courts.

Continental Insurance Co. vs. Rhoads, 119 U. S., 237.
Everhart vs. Huntsville College, 120 U. S., 223.
Robertson vs. Cease, 97 U. S., 646.
Grace vs. Ins. Co. 109 U. S., 278.

The provisions of Art. 4, Sec. 2, of the Constitution, it has been held, do not apply to statutes discriminating along the line of residence in requirements of security for costs in suits.

Haney vs. Marshal, 9 Md., 194.
Nease vs. Capehart, 15 W. Va., 299.
Head vs. Daniels, 38 Kansas, 9.

Nor to statutes giving to resident plaintiffs a longer time within which to bring action than is given to non-residents.

Chenning Bank vs. Lowery, 93 U. S., 72.

The distinction is taken and discrimination is made along the line of residence in statutes granting exemptions, and in Statutes regulating the jurisdiction of local courts over causes of action; and they have been upheld on the ground that the discrimination is not between citizens, but between residents and non-residents.

Robertson vs. Ocean Co., 112 N. Y., 315.
And cases there cited.
6 Thomp. Corp., Sec. 8001.

The discrimination between residents and non-residents is validly made in attachment laws.

Pyrolusite Co. vs. Ward, 73 Ga., 491.
Campbell vs. Morris, 3 H. & McH. (Md.), 533.
Pennoyer vs. Neff, 95 U. S., 714.

A State has the power to confine the right to take fish from its tide waters to its own citizens, denying such right to citizens of other States.

McCready vs. Virginia, 94 U. S., 391.

Since there is a well defined distinction between a "resident" and a "citizen;" since this distinction is taken in Tennessee jurisprudence, is made in the Statute here called in question, and was not disregarded in the application of relief in this particular case, we submit that the Court should not treat the statute as discriminating against citizens of other States of the Union, and thus construing the Statute denounce it as unconstitutional.

The Right to Prefer Independent of the Statute.

It is a general principle of international law that every State has the right to control property within its jurisdiction, and will in event of insolvency appropriate the same to the payment of its own creditors before assenting that any part may be removed from the State.

Story, Conflict of Laws, Sec. 525.
Life Ass'n vs. Fassett, 102 Ill., 325.
Tinkham vs. Borst, 31 Barb. (N. Y.), 412.
Wait, Insol. Corp'ns, Secs. 326, 327.
Smith vs. Mutual Life Ins. Co., 3 Tenn., Chan. 502.
Same case on appeal, 6 Lea, 564.
Gilchrist vs. Cannon, 1 Cold., 581.
8 Am. & Eng. Ency. Law, 404.
And authorities there cited.

"Every State exercises to a greater or less extent, as it deeems expedient, the comity of giving effect to the insolvent proceedings of other States, except as it may be compelled to give them full effect by the Constitution of the United States Where the transfer of the debtor's property is the result of a judicial proceeding, as in the present case, there is no provision of the Constitution which requires the Courts of another State to carry it into effect; and, as a general rule, no State Court will do this to the prejudice of the citizens of its own State."

Reynolds vs. Adden, 136 U. S., 334.
Pennoyer vs. Neff, 95 U. S., 714.

In the case at bar, it is shown that the Embreeville Company had its home office in London, England, where liquidation of its affairs was ordered and begun. (Rec. p. 2.) The jurisdiction of the domicile of this Company would, presumably, administer all the assets not held in Tennessee. There is no principle of Constitutional or international law requiring the Courts of Tennessee to give effect to the insolvent proceedings pending there, or denying to them the right to administer the assets found in Tennessee for the benefit of those creditors residing in Tennessee. It may be that the assets in administration in the jurisdiction of the domicile will pay in full all creditors residing out of the State of Tennessee. In the absence of proof showing exhaustion of those assets without satisfaction of his claim in full, may a non-resident of Tennessee be heard to urge, on constitutional or other grounds, a right to share in the Tennessee assets? There is no attempt made by plaintiffs in error to show, in pleadings or proof, what sums they have collected or might have collected in the jurisdiction of the domicile, so that the Courts of Tennessee might equalize payments to them and other creditors, if that be required.

Decree Not Final.

The decree of the Supreme Court which may be found at page 68 of the record to reverse which this writ of error is prosecuted, remands the cause to the Chancery Court for further proceedings. In adjudicating the rights of plaintiffs in error, this decree puts them and the English creditors in the same category. The further proceedings contemplated by the remandment, undoubtedly among other things were that the Tennessee residents should be paid, and the remainder distributed ratably between plaintiffs in error and the other non-residents. Until this is done, there is nothing to show this Court that they have any ground of complaint against the decree. For all that appears in the record, enough may be derived from this source and from the liquidation in London to pay them in full. The decree is therefore not final and a writ of error will not lie.

U. S. Revised Statutes, Sec. 769.
Baker vs. White, 92 U. S., 176.
McComb vs. Knox County, 91 U. S., 1.

Alien Creditors May be Excluded.

It is conceded that the position taken by plaintiffs in error with respect to the alien creditors of the Embreeville Company is well founded. They cannot claim the benefit of either section of the United States Constitution relied upon by the plaintiffs in error as citizens of Ohio and Virginia. It was clearly within the power of the Legislature of Tennessee to make preference as against aliens; and the admission of plaintiffs in error to share with residents of Tennessee would not have the effect to admit along with them alien creditors who may not draw in question the validity of the Statute.

JOHN W. GREEN,
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